

## DOUBLE TAXATION: SHIPPING PROFITS

*Exchange of notes at Washington August 11 and November 18 and 26, 1924, and January 15, February 13, and March 16, 1925*  
*Entered into force March 16, 1925; operative from May 1, 1923*  
*Superseded January 1, 1945 (as to United States tax), and April 6, 1945 (as to United Kingdom tax) by convention of April 16, 1945*<sup>1</sup>

47 Stat. 2587; Executive Agreement Series 7

*The Acting Secretary of State to the British Ambassador*

DEPARTMENT OF STATE,  
WASHINGTON, August 11, 1924

### EXCELLENCY:

Referring to the Embassy's note No. 138 of February 11, 1924, and to previous correspondence relating to a proposed arrangement between the Internal Revenue authorities of the United States and Great Britain with a view to granting relief from double income taxation in cases where the profits arising from the business of shipping are chargeable to both British income tax and to income tax payable in the United States, I have the honor to inform you of the receipt of a letter on the subject from the Secretary of the Treasury.

It appears therefrom that Section 213(b)(8) of the Revenue Act of 1921 which has been reenacted as Section 213(b)(8) of the Revenue Act of 1924<sup>2</sup> exempts from tax so much of the income of a nonresident alien or foreign corporation as is derived from the operation of a ship or ships documented under the laws of a foreign country if that foreign country in turn exempts from tax so much of the income of a citizen of the United States nonresident in such country and of a corporation organized in the United States as is derived from the operation of a ship or ships documented under the laws of the United States. The question of the exemption from tax of income derived from the operation of British vessels has, as the Embassy has observed, previously been discussed by officials of the Treasury Department with Sir Percy Thompson, Deputy Chairman of the British Board of Inland Revenue, who

<sup>1</sup> TIAS 1546, *post*, p. 671.

<sup>2</sup> 44 Stat. 25.

came to the United States for that purpose. I am informed that these discussions proved fruitless because Sir Percy Thompson did not feel at liberty to recede from the British position that the taxability of a corporation as a resident of the United Kingdom should depend not upon the place of incorporation but upon the place "where its real business is carried on and that . . . is carried on where the control and management of the company abide". (*American Thread Company v. Joyce*, 6 T.C., 163, 164.)

The navigation laws of the United States require that a corporation owning a vessel of the United States be a corporation organized in the United States and that its president and managing directors be citizens of the United States, but there is no requirement that the president and managing directors be residents of this country. It was conceivable therefore that the president and managing directors might reside in the United Kingdom, hold their meetings there, and there exercise control of the corporation. In such a case the corporation would, under British law, have been deemed a resident of the United Kingdom and as such subject to tax upon all its income. It is equally clear, however, that such a corporation would be a corporation organized in the United States and deriving income from the operation of a ship or ships documented under the laws of the United States, and would as such be entitled to exemption from British tax upon income derived from the operation of vessels of the United States, if the exemption offered by Great Britain were to be deemed equivalent to that offered under American law.

It is understood that the proposal which the British Government now makes in its suggested draft of a Declaration in Council does not require that the American corporation shall operate its business outside the United Kingdom in order to be entitled to exemption from British income tax. The British Government proposes, according to the understanding of the Secretary of the Treasury, to exempt from British income tax (including super-tax) "any profits accruing from the business of shipping carried on with ships documented under the laws of the United States to a citizen of the United States resident outside the United Kingdom or to a corporation organized in the United States". Upon the explicit understanding that the American corporation is thus exempted regardless of whether it does business in the United Kingdom or has an office or place of business therein or whether directors' meetings are held in the United Kingdom and the control of the corporation is there exercised, the Secretary of the Treasury is of the opinion that the offer communicated in the Embassy's note of February 11, 1924, satisfies the requirements of Section 213(b)(8) of the Revenue Act of 1924, so far as the United Kingdom is concerned.

The Secretary of the Treasury asks that I make clear the fact that the Treasury Department intends to construe Section 213(b)(8) of the Revenue Act of 1924 as not affording exemption to British subjects or others resident in the British dominions, colonies, dependencies, or possession, or to corporations

organized under and existing by virtue of the laws of the British dominions, colonies, dependencies, or possessions, unless the laws of such dominions, colonies, dependencies, or possessions grant an equivalent exemption to citizens of the United States and to corporations organized in the United States. The exemption from tax of income derived from the operation of ships of British registry will be confined to individuals resident in the United Kingdom, other than citizens of the United States, and to corporations organized under and existing by virtue of the laws of the United Kingdom.

Accept, Excellency, the renewed assurances of my highest consideration.

JOSEPH C. GREW  
*Acting Secretary*

His Excellency

The Right Honorable

Sir ESME HOWARD, G.C.M.G., K.C.B., C.V.O.,  
*Ambassador of Great Britain.*

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*The British Ambassador to the Secretary of State*

BRITISH EMBASSY,

No. 1106

WASHINGTON, D.C., November 18, 1924

SIR:

With reference to your note of August 11th, relating to a proposed arrangement between the Internal Revenue authorities of Great Britain and the United States with the object of granting relief from double taxation in cases where the profits accruing from the transaction of shipping business are subjected to both British and United States income taxes, I am instructed to inform you that the Board of Inland Revenue of my government agree with the conditions and limitations specified in the note.

My government have accordingly promulgated an Order in Council dated November 7th, 1924, taking effect from that date so far as Great Britain is concerned, and I expect to be able to transmit to you a copy of the Order at an early date.

I am to add that the Irish Free State in common with the other British Dominions is not to be considered as affected by this measure.

I have the honour to be with the highest consideration, Sir,

Your most obedient, humble servant,

ESME HOWARD

The Honourable,

CHARLES E. HUGHES,

*Secretary of State of the United States,  
Washington, D.C.*

*The British Ambassador to the Secretary of State*

BRITISH EMBASSY,  
WASHINGTON, D.C., *November 26th, 1924*

No. 1148

SIR:

With reference to my Note of November 18th, I now have the honour to transmit herewith for your information copy of an Order of His Majesty the King in Council, dated November 7th, 1924, and taking effect from that date, regarding the arrangement with your government for the reciprocal exemption of shipping profits from income tax.

I have the honour to be with the highest consideration, Sir,

Your most obedient, humble servant,

ESME HOWARD

The Honourable

CHARLES E. HUGHES,

*Secretary of State of the United States,  
Washington, D.C.*

[Enclosure]

AT THE COURT AT BUCKINGHAM PALACE

*The 7th day of November, 1924*

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY  
IN COUNCIL.

WHEREAS it is provided by subsection (1) of section eighteen of the Finance Act, 1923, that if His Majesty in Council is pleased to declare—

(a) that any profits or gains arising from the business of shipping which are chargeable to British income tax are also chargeable to income tax payable under the law in force in any foreign state; and

(b) that arrangements, as specified in the declaration, have been made with the government of that foreign state with a view to the granting of relief in cases where such profits and gains are chargeable both to British income tax and to the income tax payable in the foreign state;

then, unless and until the declaration is revoked by His Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from British income tax, have effect as if enacted in that Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the income tax payable in the foreign state, have the effect of law in the foreign state:

AND WHEREAS it is provided by section two hundred and thirteen of the Act of Congress of the United States of America known as the Revenue Act

of 1921, that the term "gross income", for the purpose of income tax chargeable under the law of the United States of America, shall not include the income of a non-resident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organised in the United States:

AND WHEREAS His Majesty's Government have intimated to the Government of the United States of America that they propose to take the necessary steps under the said section eighteen of the Finance Act, 1923, for providing that any profits accruing from the business of shipping carried on with ships documented under the laws of the United States to a citizen of the United States resident outside the United Kingdom or to a corporation organised in the United States shall be, and as from the first day of May, nineteen hundred and twenty-three, be deemed to have been, exempt from income tax (including super-tax) chargeable in the United Kingdom:

AND WHEREAS the Government of the United States of America have signified to His Majesty's Government that they are prepared to regard the exemption to be provided as aforesaid as an equivalent exemption within the meaning of section two hundred and thirteen of the Act of Congress of the United States known as the Revenue Act of 1921:

NOW, THEREFORE, His Majesty is pleased, by and with the advice of His Privy Council, to declare, and it is hereby declared—

(a) that certain profits or gains arising from the business of shipping which are chargeable to British income tax are also chargeable to the income tax payable under the law in force in the United States of America; and

(b) that the arrangements aforesaid have been made with a view to the granting of relief in cases where profits or gains arising from the business of shipping are chargeable both to British income tax and to the income tax payable in the United States of America.

AND HIS MAJESTY is further pleased to order, and it is hereby ordered, that this Declaration may be cited as The Relief from Double Income Tax on Shipping Profits (United States of America) Declaration, 1924.

M. P. A. HANKEY.

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*The Secretary of State to the British Ambassador*

DEPARTMENT OF STATE,  
WASHINGTON, January 15, 1925

EXCELLENCY:

I have the honor to refer to your note No. 1148 dated November 26, 1924, enclosing a copy of an Order of His Majesty the King, in Council, dated November 7, 1924, regarding the arrangement with your Government for the reciprocal exemption of shipping profits from income tax.

The appropriate authorities of this Government have been giving consideration to the matter and feel that some uncertainty exists with regard to the provision in the third paragraph of the Order in Council to the effect that the exemption shall be deemed to take effect on May 1, 1923, whereas your note transmitting the Order in Council dated November 7, 1924, states that it will take effect "from that date".

I shall be grateful if you will be so good as to furnish me a statement regarding the exact date from which exemption is granted to American citizens or corporations under British laws in order that the exemption of British subjects or corporations under the laws of the United States may be made effective from the same date.

Accept, Excellency, the renewed assurances of my highest consideration.

CHARLES E. HUGHES

His Excellency

The Right Honorable

Sir ESME HOWARD, G.C.M.G., K.C.B., C.V.O.,  
*Ambassador of Great Britain.*

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*The British Ambassador to the Secretary of State*

BRITISH EMBASSY,

WASHINGTON, D. C., *February 13, 1925*

No. 159

SIR:

I have the honour to refer to your note of January 15th, concerning the arrangement with my Government for the reciprocal exemption of shipping profits from income tax and to inform you in reply to the enquiry contained in the last paragraph, that the date from which exemption from British Income Tax (including supertax) is granted in respect of shipping profits of American citizens or corporations under British laws is May 1st, 1923. I venture to request that instructions may be issued without delay by the appropriate authorities of your Government whereby the British interests concerned may benefit by this arrangement from the date above mentioned.

I have the honour to be with the highest consideration, Sir,

Your most obedient, humble servant,

ESME HOWARD

The Honourable

CHARLES E. HUGHES,

*Secretary of State of the United States,  
Washington, D.C.*

*The Secretary of State to the British Ambassador*

DEPARTMENT OF STATE,  
WASHINGTON, D. C., *March 16, 1925*

## EXCELLENCY:

I have the honor to refer to your note No. 159 dated February 13, 1925, concerning the arrangement for the reciprocal exemption of shipping profits from income tax and to state that a communication has now been received from the appropriate authority of this Government in which it is stated that careful consideration has been given to the Order in Council dated November 7, 1924, and to the statements contained in your note above mentioned, and that it has been decided that Great Britain satisfies the equivalent exemption provisions of Section 213(b)(8) of the Revenue Act of 1921. Reference is also made to the Act of Congress approved June 2, 1924, known as the Revenue Act of 1924, which contains the provision relating to taxation for 1924 and subsequent years. The provisions of Section 213(b)(8) of the Revenue Act of 1924 are identical in terms with the corresponding section of the Revenue Act of 1921. It is therefore held that Great Britain satisfies the equivalent exemption provisions of Section 213(b)(8) of the Revenue Act of 1924.

It has also been determined that the exemption from Federal tax under this holding shall be deemed to be effective from May 1, 1923, the date stipulated by your Government as the date from which the exemption applies under British laws to the income of American citizens not resident in the United Kingdom and corporations organized in the United States, derived from the operation of ships documented under the laws of the United States.

Reference is also made to the last paragraph of Mr. Grew's note dated August 11, 1924, setting forth the construction to be placed upon Section 213(b)(8). In the last paragraph of your note No. 1106 dated November 18, 1924, you stated that "the Irish Free State in common with the other British Dominions" was not to be considered as affected by the Order in Council. Accordingly the exemption from Federal taxation in the United States will be applied on the basis of this understanding.

Accept, Excellency, the renewed assurances of my highest consideration.

FRANK B. KELLOGG

His Excellency

The Right Honorable

Sir ESME HOWARD, G.C.M.G., K.C.B., C.V.O.,

*Ambassador of Great Britain.*